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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL D. WHITMARSH,
WILLIAM HERTLING, and MARK DOVI

Appeal 2008-0461
Application 09/829,049
Technology Center 2100

Decided: September 23, 2008

Before LANCE LEONARD BARRY, HOWARD B. BLANKENSHIP, and
CAROLYN D. THOMAS, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

A Patent Examiner rejected claims 31-53. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

A. INVENTION

The Appellants' "extensible, network-based user interface allows remotely located resources to serve multiple clients." (Abs.) More specifically, "[t]he user interface includes a controller and other processing units and databases that collect, collate[,] and process product and user information to dynamically construct client-specific user interfaces." (*Id.*)

B. ILLUSTRATIVE CLAIM

Claim 52, which further illustrates the invention, follows.

52. A network-based user interface system, comprising:

an extensible resource interface located at a first network node and adapted for coupling to a plurality of client devices each located at one of a plurality of second network nodes different from the first network node, the extensible resource interface including

means for collecting resource information from one or more resources located at other than the first network node; and

means for providing over the network from the extensible resource interface to a particular one of the client devices a customized user interface for a particular one of the resources, the customized user interface based on the resource information and on user preferences associated with the particular one of the client devices, the customized user interface further displayable by the particular one of the client devices.

C. REJECTIONS

Claims 31-34, 36-39, 41-45, and 47-53 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,832,298 ("Sanchez").

Claim 35 stands rejected under 35 U.S.C. § 103(a) as obvious over Sanchez and UK Patent No. GB 2,347,766 ("Wilson").

Claim 40 stands rejected under § 103(a) as obvious over Sanchez and U.S. Patent No. 6,232,968 ("Alimpich").

Claim 46 stands rejected under § 103(a) as obvious over Sanchez.

II. ISSUE

"Rather than reiterate the positions of the parties *in toto*, we focus on an issue therebetween." *Ex parte Kuruoglu*, No. 2007-0666, 2007 WL 2745820, at *2 (BPAI 2007). The Examiner finds that "Sanchez teaches a server (first network node) that can be located on the Local Area Network (described in column 5, lines 29-44 and stated to not be shown . . . that couples to a workstation (client device) (either device [11] or [12] of figure 1)." (Ans. 13.) He further finds that "the server collects status information of the peripheral device(s) (resources) (either device [16] or [15]) (see column 2, lines 38-41)" (*id.* 15) and that the reference also teaches "[p]roviding (by the server) for display on the client device (located at a different node in the LAN) the graphical image based on options of the peripheral device(s) (resource) and options of the client device" (*id.*).

The Appellants argue that in "the Sanchez reference . . . the extensible resource interface is located at the same network node as a client device; i.e. the extensible resource interface is located at computing equipment 11."

(Reply Br. 17.) Therefore, the issue is whether the Examiner has shown that Sanchez teaches an extensible resource interface that provides a customized user interface to a client device that is located at a different network node than the extensible resource interface.

III. AUTHORITIES

"[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). "[A]nticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim . . ." *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984)). "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

Of course, "[e]very patent application and reference relies to some extent upon knowledge of persons skilled in the art to complement that [which is] disclosed. . . ." *In re Bode*, 550 F.2d 656, 660 (CCPA 1977) (quoting *In re Wiggins*, 488 F.2d 538, 543 (CCPA 1973)). Those persons "must be presumed to know something" about the art "apart from what the references disclose." *In re Jacoby*, 309 F.2d 513, 516 (CCPA 1962).

IV. FINDINGS OF FACT

1. Sanchez's "invention can be embodied in any one of computers 11 or 12. However, for the purpose of simplicity, the present invention will be described with respect to computing equipment 11 . . ." (Col. 5, ll. 18-22.)
2. "As shown in FIG. 2, computing equipment 11 includes a central processing unit (CPU) 21 . . ." (*Id.* ll. 45-46.)
3. "Computing equipment 11 may include a mass storage device such as a computer disk drive . . . for storing application program files which can include Windows applications, DOS, Novell Netware.RTM., printer/ facsimile driver, and local device drivers." (*Id.* ll. 29-35.) "Alternatively, some or all of these applications can be stored on a networked file server (not shown) accessible to computing equipment 11 via local area network 10." (*Id.* ll. 35-38.)
4. "CPU 21 loads those programs . . . into main memory 30 and executes those stored programs out of main memory 30." (*Id.* ll. 57-59.)
5. "[A] file server is a sophisticated device that not only stores files but manages them and maintains order as network users request files and make changes to them." (Reply Br. 4 (quoting *Microsoft Computer Dictionary*, (4th ed. 1999)).

V. ANALYSIS

Here, although Sanchez's networked file server may store a printer/facsimile driver (FF 3), persons skilled in the art know that the file server merely stores, manages, and maintains the order of the driver (FF 5.) Because the driver must be downloaded from the file server to computer 11 (or 12) and executed by the computer's CPU to perform any operations (FF 4), we agree with the Appellants that "[i]t is only when the copier driver file is downloaded to, and executed by, computing equipment 11 that the [reference's] adaptive graphical user interface comes into existence." (Reply Br. 5.) Because the reference's adaptive graphical user interface comes into existence only when the driver file is downloaded to, and executed by, the computer, moreover, we further agree with the Appellants that in "the Sanchez reference . . . the extensible resource interface (i.e. the adaptive graphical user interface) is located at the same network node as a client device (i.e. computing equipment 11 or laptop computer 12)." (*Id.* 8.)

The Examiner does not allege, let alone show, that the addition of Wilson or Alimpich cures the aforementioned deficiency of Sanchez.

VI. CONCLUSION

For the aforementioned reasons, the Examiner has not shown that Sanchez teaches or would have suggested an extensible resource interface that provides a customized user interface to a client device that is located at a different network node than the extensible resource interface. The absence of such a showing negates anticipation and obviousness.

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Therefore, we reverse the rejections of claims 31-53.

REVERSED

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